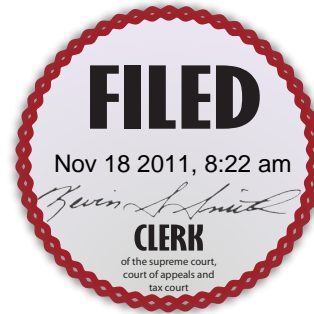


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BECKY MELTON,

Appellant-Petitioner,

vs.

MICHAEL MELTON,

Appellee-Respondent.

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No. 71A03-1105-DR-217

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable David C. Chapleau, Judge
Cause No. 71D06-0912-DR-651

November 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Becky Melton (“Wife”) appeals from the trial court’s order denying in part and granting in part her motion to correct error and for reconsideration of its decree of dissolution of Wife’s marriage to Michael Melton (“Husband”). Wife presents the following restated issue for our review: whether the trial court abused its discretion in its division of property.

We affirm.

FACTS AND PROCEDURAL HISTORY

Beginning in 1990, Husband and Wife lived together in Granger, Indiana, in a home Husband previously had built and received as his property in a prior dissolution. Husband and Wife kept their finances separate until their marriage in September 1996,¹ with Husband making the mortgage payments and paying for all of the utilities until the couple subscribed to cable television for which Wife paid. Wife also paid for the couple’s groceries and telephone bills.

In 1985, Husband had begun construction of the home in which they lived, building it himself, but using subcontractors for the electrical and plumbing work. Husband paid for all of the construction of the home prior to living there with Wife and obtained a construction loan in order to finish the home. When Wife moved in, she bought curtains and wallpaper for three of the bedrooms. Husband had already planted the front lawn on the property, and Wife helped Husband install a sprinkler system.

In 2003, during Husband and Wife’s marriage, the property, which was titled in Husband’s name, was sold and Husband received \$181,826 in net sales proceeds. All of the

¹ No children were born of Husband and Wife’s marriage.

proceeds from the sale of property were used to construct Husband and Wife's current home in North Liberty, Indiana. Husband and Wife had purchased twenty acres of property adjacent to Wife's parents' property in 2001, but construction of the new marital residence did not begin until Spring 2004. During the construction of the new home, Husband and Wife lived with Wife's aunt, and Wife made the rent and utilities payments. Husband paid for the construction of the new house.

At the time Wife filed her petition for dissolution of the marriage, the marital residence and property had equity of \$230,961. In the dissolution proceedings, Wife asked to be awarded the marital residence because of its proximity to her parents' home, which made it easier for her to help care for her parents. Husband wanted to be awarded the marital residence and property because he had built the house as his retirement home, and had constructed a 2,000-square-foot shop with 12-foot ceilings in which he worked on restoring an automobile and did woodworking projects. Husband maintained the 2 ½ acres of grass on the property and maintained the 700-foot-long lane leading to the house.

Husband initially had greater income than Wife when they were first living together. Wife's income increased during the course of the relationship and, by 2000, she was earning more than Husband. Wife also had the use of a company car. In the year prior to the bench trial, Wife earned approximately \$80,000. Husband earned \$22.95 per hour and had a base annual income of \$47,837.50. With overtime, Husband had made \$60,000 the year prior to trial. The availability of overtime work, however, was decreasing.

Wife filed her petition for dissolution of marriage on July 2, 2009. The dissolution

decree was filed on January 24, 2011. On February 17, 2011, Wife filed a motion to correct error and for reconsideration. After a hearing was held on the motions, the trial court granted Wife's motion to correct error in part and denied it in part. Wife now appeals.

DISCUSSION AND DECISION

Wife appeals from the trial court's division of marital property and argues that the trial court abused its discretion by slightly deviating from the presumptive equal division of property, by failing to assign a value to the personal property of the parties, and by awarding the marital residence to Husband. We disagree.

Generally, when, as here, a trial court enters findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A), we apply a two-tiered standard of review; first we determine whether the evidence supports the findings, and second, whether the findings support the judgment. *Davis v. Davis*, 889 N.E.2d 374, 379 (Ind. Ct. App. 2008). In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. *Id.* We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. *Id.* Those appealing the trial court's judgment must establish that the findings are clearly erroneous. *Id.* Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *Id.* We do not defer to conclusions of law, however, and evaluate them *de novo*. *Id.*

The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. *Nornes v. Nornes*, 884 N.E.2d 886, 888

(Ind. Ct. App. 2008). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances presented. *Id.* When we review a challenge to the trial court's division of marital property, we may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of marital property. *Id.*

It is well-established that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4(a); *Beard v. Beard*, 758 N.E.2d 1019, 1025 (Ind. Ct. App. 2001). This “one-pot” theory ensures that all assets are subject to the trial court's power to divide and award. *Thompson v. Thompson*, 811 N.E.2d 888, 914 (Ind. Ct. App. 2004). Marital property also includes both assets and liabilities. *Capehart v. Capehart*, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999). The trial court has no authority to exclude or set aside marital property but must divide all property. *Moore v. Moore*, 695 N.E.2d 1004, 1010 (Ind. Ct. App. 1998).

A trial court's discretion in dividing marital property is to be reviewed by considering the division as a whole, not item by item. *Fobar v. Vonderahe*, 771 N.E.2d 57, 59 (Ind. 2002). Indiana Code section 31-15-7-4 provides that marital property shall be divided “in a just and reasonable manner.” Further, a trial court may deviate from equal division so long as it sets forth a rational basis for its decision. *Hacker v. Hacker*, 659 N.E.2d 1104, 1109 (Ind. Ct. App. 1995).

Wife asserts that the trial court abused its discretion by failing to divide the marital

estate equally. There is a statutory presumption that an equal division of the marital property is just and reasonable. Ind. Code § 31-15-7-5. However, that presumption may be rebutted by evidence of the extent to which property was acquired prior to the marriage, and the economic circumstances of each spouse. *Id.* Here, the value of the total marital estate was \$982,892.30. In its decree, the trial court awarded Husband \$502,410.00, or fifty-one percent of the estate, and Wife \$480,482.30, or forty-nine percent of the estate. The trial court based this minor deviation from the presumptive equal division on Husband's substantial pre-marital acquisition of the real estate in Granger, Indiana and on Wife's superior earning ability. Both of those statutory factors are supported by the evidence. Such division was within the trial court's discretion, and we find no abuse of that discretion.

Wife also challenges the trial court's award of the marital residence to Husband. She argues that all of the significant ties to that property are hers because of its location adjacent to her family's farm. Both parties presented valid reasons in favor of the award of the marital residence. The trial court found that Husband, who was fifty-six years old at the time of the trial, had built the marital residence in North Liberty, Indiana as the home he wanted to live in during retirement. Husband built a shop on the property in which he could work on restoration of a car and could pursue his woodworking hobby. Husband also maintained the property. Although Wife presented evidence to support her argument that she should be awarded the marital residence, we will not reweigh the evidence that was before the trial court. *Nornes*, 884 N.E.2d at 888. It was within the trial court's discretion to award the marital residence to Husband, and we find no abuse of that discretion as there is evidence of

record in support of the award. *Smith v. Smith*, 854 N.E.2d 1, 7 (Ind. Ct. App. 2006).

We now consider Wife's claim that the trial court erred by failing to assign a value to the personal property awarded to the parties. Neither party introduced evidence of the value of the personal property each was taking. Instead, Husband introduced an exhibit, which reflected the parties' agreement as to the distribution of the personal property. *See Appellant's App.* at 47. The record further reflects that the parties agreed that Husband was receiving \$12,000 more in personal property, Husband agreed to pay Wife \$12,000 to equalize the distribution of the personal property. *Id.* at 35. "The burden of producing evidence concerning the valuation of the assets lies with the parties to the proceedings." *Lewis v. Lewis*, 638 N.E.2d 859, 860 (Ind. Ct. App. 1994). "The parties are bound by the evidence they introduced at trial." *Scheetz v. Scheetz*, 522 N.E.2d 919, 920 (Ind. Ct. App. 1988). "[A]ny party who fails to introduce evidence as to the specific value of the marital property at the dissolution hearing is estopped from appealing the distribution on the ground of trial court abuse of discretion based on that absence of evidence." *Church v. Church*, 424 N.E.2d 1078, 1081 (Ind. Ct. App. 1981). Accordingly, we find that Wife's allegation that the trial court abused its discretion by failing to attribute a value for the parties' personal property has been waived.

Affirmed.

BAKER, J., and BROWN, J., concur.